

Internal Revenue Service  
Regional Commissioner

Department of the Treasury

Date: APR 7 1992

Employer Identification Number:  
[REDACTED]

Form Number:  
1120

Tax Years:  
[REDACTED]

Key District:  
Cincinnati, Ohio

Person to Contact:  
[REDACTED]

Contact Telephone Number:  
[REDACTED]

Gentlemen:

This is a final adverse determination as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse determination was made for the following reason(s):

It has not been established that [REDACTED] has been organized and operated exclusively for charitable purposes within the meaning of IRC Section 501(c)(3).

The corporation's property is being or will be used to serve private interests rather than public interests.

The corporation's property is being or will be used to provide benefits that inure to private shareholders or individuals.

Contributions to your organization are not deductible under Code section 170.

You are required to file Federal income tax returns on the form indicated above. Based on the financial information you furnished, it appears that returns should be filed for the above years. You should file these returns with your key District Director, EP/EO Division, within 30 days from the date of this letter, unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because you have filed a petition for declaratory judgment under Code section 7428. You should file returns for later tax years with the appropriate service center shown in the instructions for those returns.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, a petition to the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia must be filed within 90 days from the date this determination was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

(over)

Cleveland Appeals Office  
P.O.Box 99189  
Cleveland, Ohio 44199

Letter 1371(RO) (1-80)

We will notify the appropriate State officials of this action, as required by Code section 6104(c).

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

/s/ [REDACTED]

[REDACTED]  
Associate Chief  
Appeals Office

Internal Revenue Service

District  
Director

Department of the Treasury

P.O. Box 2508  
Cincinnati, OH 45201

Person to Contact:

Telephone Number:

Refer Reply to:

EP/EO

Date: AUG 21 1990

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code and we have concluded that you do not.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a trust or Form 1120 if you are a corporation or an unincorporated association. Contributions to you are not deductible under section 170 of the Code.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe that it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues". The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office, or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

8/12/90

8/12/90

90

[REDACTED]

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that:

A declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within the time specified, this will become our final determination. In that event, appropriate State officials will be notified of this action in accordance with the provisions of section 6104(c) of the Code.

Sincerely yours,

[REDACTED]

District Director

Enclosures: 3

11

ENCLOSURE I

Information that you submitted disclosed that you were incorporated under the laws of the State of [REDACTED]. Your purposes as set forth in the [REDACTED] article of your Articles of Incorporation are as follows:

To provide, operate, and manage a home-like residence for persons with mental retardation exclusively to meet the needs, abilities, and desires of its residents as well as to facilitate their development of independent living skills. The Corporation shall be operated exclusively for or for the benefit of charitable, religious, scientific, literary, or educational purposes as defined under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

The Code of Regulations agrees with the purpose as stated in the Articles of Incorporation along with the following provisions:

To solicit and receive by gift, grant, devise or bequest, and to acquire by purchase, lease, exchange or otherwise, property, both real and personal, either as absolute owner or as trustee thereof, and to manage and administer the same.

To hold property and to invest and reinvest the same and to apply the income toward the needs of the residents.

[REDACTED] (hereafter referred to as the Corporation) began as a consortium of families dedicated to the pursuit of a home in which their adult daughters who have mental retardation and/or developmental disabilities could reside, share life experiences, and mutually benefit from such independent setting.

The Code of Regulations provide that membership will be composed of the officers of the Corporation. The current officers consist of one parent of each of the [REDACTED] pre-selected residents.

The organization will be funded by state and local grants, residents social security income, and by private contributions from the family consortium members and other persons in the community who want to donate goods and services.



[REDACTED]

In response to our letter dated [REDACTED], the Corporation described the requirements for admission to residency. The residents will be the adult daughters of the members of the founding organization. They are all ambulatory and will attend the same workshop facility during the day. Each of the families have similar expectations and desires for their daughters which will be facilitated through their combined responsibility for the operation of the home. The young women who will reside in the home are compatible, maintain the same general work hours, and benefit from approximately the same level of staffing, recreation, and other supports. Their residency is anticipated to be permanent. Subsequent admissions, should that become necessary for any reason, will be considered based upon the compatibility of the young woman and her family with the existing residents.

The Corporation will lease a two-story, four-bedroom, single family dwelling for use as its facility. It is located in a neighborhood of single-family homes, close to churches, shopping facilities, and bus lines. The Corporation will lease the facilities at \$[REDACTED] per month.

The lessor of the facilities is [REDACTED] which was also formed by the families of the [REDACTED] residents of the home. The partnership was formed for the purpose of purchasing real estate for lease to the Corporation. There are [REDACTED] partners in [REDACTED], consisting of the [REDACTED] parents of each of the [REDACTED] residents for whom the lease was entered. Each of the [REDACTED] families has contributed \$[REDACTED] toward the \$[REDACTED] down payment on this property. The [REDACTED] year mortgage on the balance of the purchase price including insurance and taxes is approximately \$[REDACTED] per month. The partnership plans to donate this property to the Corporation once it is established as an on-going project.

The family consortium has worked closely with the [REDACTED] and [REDACTED] which will certify that all state requirements have been met.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations states that in order to qualify under section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the Regulations states that an organization is not operated for one or more exempt purposes if its net earnings inure in whole or part to the benefit of private shareholders or individuals.

Section 1.501(a)(1)-1(c) of the Regulations defines "private shareholder or individual" as any person or persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides that qualification under section 501(c)(3) is not available for organizations operated for the benefit of designated individuals or persons who created the organizations. The Regulations state that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. To meet the requirements of this section, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or person controlled, directly or indirectly by such private interests.

Revenue Ruling 67-367, 1967-2 C.B. 188 provides that a nonprofit organization whose sole activity is the operation of a "scholarship" plan for making payments to pre-selected, specifically named individuals does not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Revenue Ruling 69-175, 1969-1 C.B. 149 describes an organization formed by parents of pupils attending a public school that provides school bus transportation for its members' children. The ruling states that when a group of individuals associate to provide a cooperative service for themselves, they are serving a private interest. Such an organization may not qualify for exemption under section 501(c)(3) of the Code.

Although your corporation may be established for a charitable class of people, the founders have personal and private interests which preclude exemption.

In your correspondence dated [REDACTED], you claim that no benefit inures to private individuals. You stated that it costs the parents more money to support their children in an independent setting than it would to keep them at home. When the parents decided to organize this consortium, they must have seen it as some benefit to their families or they would simply have kept the children at home. Inurement of benefit to "private individuals", whether monetary or not, is prohibited. (See Rev. Rul. 69-175.)

You claim that your Corporation is lessening the burdens of government thus entitling you to exemption under section 501(c)(3) of the Code. An organization is not operated to lessen the burdens of government when there is significant private benefit. The Corporation was formed by parents for the benefit of their children which results in inurement.

To form your organization, [REDACTED] families organized to obtain, support, and manage a home in which their adult daughters who have mental retardation and/or other developmental disabilities could reside.

The residents of the facility have been pre-selected. The families of the [REDACTED] residents formed [REDACTED] to purchase real estate which includes a two story home. This facility will then be leased to [REDACTED]. The organizers of [REDACTED] are the same as the organizers of [REDACTED]. Each of these persons has a private interest in the operation of the facility. (See Rev. Rul. 67-367.)



[REDACTED]

Based upon the information submitted, we have concluded that you are not operated for one or more exempt purposes because you are operating for the benefit of the designated residents of [REDACTED] and their families. Therefore, you are serving private interests rather than operating for a public purpose.

The law cited within this enclosure supports our determination. Accordingly, we have concluded that you do not qualify for exemption from Federal income tax under section 501(c)(3) of the Code.